

1 BY MR. HUTTON:

2 Q In that testimony Mr. Haag recounts some
3 discussions he had with you about the opportunity to apply
4 for the channel in Reading, Pennsylvania and other
5 television stations, is that correct?

6 A Yes.

7 Q Did you hear my question?

8 A I answered your question.

9 THE COURT: He said yes.

10 MR. HUTTON: Okay.

11 BY MR. HUTTON:

12 Q And Mr. Haag didn't indicate any discussion with
13 you about Mr. Parker or character qualifications did he?

14 A Yes.

15 Q And would it be fair to say that Mr. Haag's
16 testimony was consistent with the testimony of the other
17 witnesses in their depositions?

18 A Yes.

19 MR. COLE: Objection. I believe it's appropriate
20 if Mr. Hutton wants to ask about other depositions, he
21 should put the other depositions before the witness.

22 THE COURT: I'll sustain the objection.

23 MR. HUTTON: Your Honor, the witness was able to
24 answer the question from memory.

25 THE WITNESS: You said would it be fair to say. I

1 said it would be fair to say that. If you say it, then it's
2 fair to say it.

3 THE COURT: I can't believe that the witness is
4 doing that from total memory. But, I mean he's willing to
5 accept your representation, but --

6 THE WITNESS: You're a member of the Bar. I
7 assume what you say is correct.

8 THE COURT: Let's go off the record.

9 (Pause)

10 THE COURT: On the record.

11 Mr. Hutton, you may proceed, sir.

12 MR. HUTTON: Thank you.

13 BY MR. HUTTON:

14 Q Mr. Gilbert, at the time the decision was made to
15 form Adams Communications and pursue opportunities to file
16 against renewal applications of at least one other station,
17 or of at least one existing station, were you aware of a
18 decision by the Federal Communications Commission as to
19 whether or not home shopping stations served the public
20 interest?

21 A Of a decision? No.

22 MR. HUTTON: I'd like to show the witness a
23 document for purposes of refreshing his recollection.

24 THE COURT: You may approach.

25 Are you going to mark this as an exhibit or --

1 MR. HUTTON: I don't think so. It's --

2 THE COURT: Is this a Commission case?

3 MR. HUTTON: Yes, it is.

4 THE COURT: That's all right, we don't have to
5 mark this.

6 The witness is being shown a case entitled --

7 THE WITNESS: It's not a case, Your Honor.

8 THE COURT: It's not a case.

9 MR. HUTTON: It's a report and order.

10 THE COURT: It starts at page two --

11 MR. HUTTON: It's because it's a Lexus printout.

12 THE COURT: You tell me what this represents.

13 MR. HUTTON: All right. This is a Lexus printout
14 of the report and order in MM Docket No. 93-8. It's
15 reported at 8FCC Record 5321, 1993, FCC Lexus 4749 73 RR 2nd
16 355, and it was released by the Commission on July 19th,
17 1993.

18 THE COURT: What is it titled? What is the
19 subject?

20 MR. HUTTON: The subject is implementation of
21 Section 4G of the Cable Television Consumer Protection and
22 Competition Act of 1992, Home Shopping Station Issues.

23 THE COURT: What do you want the witness to do
24 with this document?

25 MR. HUTTON: I want the witness to tell me if he

1 was aware of this report and order at the time Adams filed
2 its application in Reading, Pennsylvania.

3 THE COURT: Okay.

4 THE WITNESS: That isn't the question he asked
5 before though, Your Honor.

6 THE COURT: No, but that's the question he's
7 asking now.

8 THE WITNESS: Yes, I was aware of it.

9 BY MR. HUTTON:

10 Q And reading at the bottom of the first page here
11 which is entitled page two, and the top of page three, do
12 you see the conclusion that "home shopping stations serve
13 the public interest and we thereby qualify them as local
14 commercial television stations for the purposes of mandatory
15 cable carriage"?

16 A Yes, sir.

17 Q You were aware of that?

18 A Yes.

19 Q Mr. Gilbert, I'm going to ask you a series of
20 questions about your activities and the activities of Adams
21 in the period prior to filing the application in Reading,
22 Pennsylvania.

23 THE COURT: Before you begin, let me just ask you.
24 Reading Exhibit 24 has not been moved into evidence. Do you
25 want to do that now?

1 MR. HUTTON: I would like to do that now.

2 THE COURT: Reading Exhibit No. 24 is moved into
3 evidence, motion to receive it into evidence. Any
4 objection?

5 MR. COLE: No objection, Your Honor.

6 THE COURT: Reading Exhibit 24 is now received in
7 evidence.

8 (The document referred to,
9 having been previously marked
10 for identification as Reading
11 Exhibit No. 24 was received in
12 evidence.)

13 THE COURT: I'm sorry, Mr. Hutton. You may
14 proceed now.

15 MR. HUTTON: All right.

16 BY MR. HUTTON:

17 Q Again, I want to focus on the period of time
18 before the Adams application in Reading, Pennsylvania was
19 filed.

20 Before that time, how much time did you spend in
21 Reading in connection with the Adams application?

22 A Are you asking hours, days, what?

23 Q Whatever is --

24 A I was there a number of days.

25 Q All right, let's take it one by one. When was the

1 first time you went to Reading, Pennsylvania in connection
2 with the Adams application?

3 A Several months before we filed the application.

4 Q What was the purpose of that visit?

5 A I had two purposes. The immediate purpose, or an
6 immediate purpose, was to find a transmitter site. The
7 other purpose was to find out what was going on in terms of
8 service to the community.

9 Q If you were looking for a transmitter site, does
10 that mean you had largely decided to proceed with an
11 application?

12 A No, but we'd had a bad experience in Boston and I
13 knew that looking for a transmitter site was, strangely
14 enough, a huge problem. There was a presumption on my part,
15 as I told you, and on the Adams people, that home shopping
16 network stations would be extremely hard pressed to serve
17 the public service, to provide adequate public service
18 programming according with the mandate of the statute. So
19 that was going to be easy to prove, we believed.

20 The hard thing, as we had found in Boston, was to
21 get an antenna. We put in a lot of time and money in Boston
22 and never got the antenna. So the time flow was spend more
23 time, frankly, on doing that and running the other
24 simultaneously. It was easy to do both given the amount of
25 time I would spend there on a day.

1 Q Was that visit a one-day visit?

2 A I always made one-day visits. I was never there
3 more than one day at a time.

4 Q Did you watch television on that visit?

5 A Absolutely.

6 Q Did you watch Station WTVE?

7 A No.

8 Q After that, did you visit Reading again before the
9 application was filed?

10 A A number of times.

11 Q How many times?

12 A I went there a number of times, there and the
13 territory around it, looking at potential transmitter sites.
14 And I went into the town at least three times and talked to
15 people in the town including people at the Reading Eagle
16 about the station.

17 Q I'm sorry, how many times did you say?

18 A At least three I would say. I think, it's hard
19 for me to remember now. I may have been in the territory
20 and not even gone into the town a couple of times when we
21 were looking at antenna sites.

22 Q So probably three visits and on one or more of
23 those visits you did not go into Reading itself?

24 A I was in Reading at least three times, I would
25 say. Yeah, I was there three times at least.

1 Q So how many visits to the Reading area did you
2 make?

3 A A lot. I just don't remember. It was hard to
4 find a site. I scoured the area with brokers.

5 Q I'd like you to refer to pages seven through
6 eleven of your deposition for purposes of refreshing your
7 recollection.

8 A Uh huh.

9 THE COURT: Let's go off the record while he
10 reviews the pages.

11 (Pause)

12 THE COURT: On the record.

13 You've read the document?

14 THE WITNESS: Yes.

15 THE COURT: I'm sorry, Mr. Hutton. You may
16 proceed.

17 MR. HUTTON: All right.

18 BY MR. HUTTON:

19 Q Now the questions I've been asking you have been
20 with respect to the period of time before the application
21 was filed. Is that correct?

22 A Yes.

23 Q Pages five and six you refer to a visit in July or
24 August of 1999, and that's after the application was filed.
25 Then following that, on page eight I asked you when you had

1 visited Reading previously, and you indicated that you had a
2 visit several years before to negotiate a transmitter site.

3 A Yes.

4 Q You indicate on page nine that that visit was a
5 couple of hours, on line 15.

6 A Page nine?

7 Q Page nine, line 15.

8 MR. COLE: Your Honor, if I may interject. It
9 appears the pagination is messed up. I'm looking at page
10 nine, line 15 is a question which is, "Was that for an
11 existing tower?"

12 THE COURT: I have line 15 saying an answer, "A
13 couple of hours."

14 MR. COLE: Page ten?

15 THE COURT: That's what I have on page nine.

16 MR. COLE: I'm sorry. I may have handed the
17 witness a regional copy before. I'm sorry, I apologize,
18 Your Honor.

19 Thank you. I now have --

20 THE COURT: You're all set now?

21 MR. COLE: Yes, thank you.

22 THE COURT: All right, the witness has acknowledge
23 his answer of a couple of hours.

24 BY MR. HUTTON:

25 Q Then on page ten you testify about a visit a month

1 or two beforehand to try to understand what Reading was all
2 about, that's before the transmitter site visit. Do you
3 recall that?

4 A Yes, reading it.

5 Q Then on page 11 you indicate you were in Reading
6 that time a number of hours, less than a day.

7 A Yes.

8 Q And then on line 12 I asked you, "Prior to that
9 had you visited Reading before?"

10 Answer: "I may have gone there one more time,
11 too. I may have done this twice. I'm not sure."

12 A Yes.

13 Q Now is your deposition testimony correct? Or is
14 it complete with respect to your visits to Reading prior --

15 A You ask questions in a certain way and I answer
16 your questions. And you don't probe thereafter to find out
17 and get more detail. You've done that today, too.

18 My answer is correct. I was there three times for
19 this purpose. Yes.

20 Q Did anyone else from Adams Communication visit
21 Reading prior to filing the application? In connection with
22 the application.

23 A No.

24 Q And of the three visits, did you ever watch WTVE
25 on any of the visits?

1 A No.

2 Q Did you ever prepare a written analysis or take
3 any written notes on the nature of WTVE's market?

4 A I took no notes, no. But we had information
5 available. Duncans and other material. Plus Mr. Haag and
6 Mr. Fickinger are two extraordinarily knowledgeable people.
7 If you would say Reading, Pennsylvania, they would say it's
8 140 person or whatever it is market in the United States and
9 roll out the demographics on it.

10 Q But your answer is you took no notes and you had
11 no written analysis about the market?

12 A The answer is clearly no.

13 Q Did you take any written notes or did you have any
14 written analysis about the demographics of the market?

15 A No.

16 Q Did anyone else do so for Adams?

17 A Written notes?

18 Q Written notes or written analysis of any kind
19 about the market.

20 A No.

21 Q Did you ever research the income or the revenue of
22 the station WTVE before filing the Adams application?

23 A No. We weren't interested in that. We were a
24 public interest case.

25 Q Did anyone else ever research the revenue or

1 income of the station before the Adams application was
2 filed?

3 A No.

4 Q Did you research the value of WTVE or the
5 potential construction permit before filing the Adams
6 application?

7 A No.

8 Q Did anyone else do so for Adams?

9 A No.

10 Q After the application was filed, has anyone from
11 Adams ever visited Reading in connection with the
12 application?

13 A I don't know.

14 Q Are you aware of any such visits?

15 A No.

16 MR. COLE: Excuse me, Your Honor, if I may
17 interject.

18 Mr. Hutton, I believe you already had educed
19 testimony from Mr. Gilbert concerning one post-filing visit
20 which is reflected in his deposition. Are you excluding
21 that, or is that --

22 MR. HUTTON: The question had to do with the other
23 Adams principals.

24 MR. COLE: Thank you.

25

1 BY MR. HUTTON:

2 Q Have you or any of the other Adams principals ever
3 lived in Reading, Pennsylvania?

4 A No.

5 Q Have you or any of the other Adams principals had
6 a connection with Reading through civic activities or
7 business activities?

8 A Yes.

9 Q What are those connections?

10 A Mr. Steinfeld has had business activities in
11 Reading. And Mr. Podolsky may or may not have. I'm not
12 quite sure. But he has extensive relationships in Reading.

13 Q What do you mean by extensive relationships?

14 A He knows a lot of people there, and I don't know
15 whether it's on a social or an economic basis. He knows
16 some extremely well, has stayed in their home. I don't know
17 if it's in their home in Reading or in Florida, but he
18 stayed in the home of some people that --

19 Q Do you know when that was?

20 A I don't know.

21 Q Within the last ten years to your knowledge?

22 A I don't know. I really don't know. I would
23 assume so, but I have no knowledge.

24 Q Did you or anyone else from Adams recruit anyone
25 who lived in the Reading area to participate in the Adams

1 application?

2 A Could you please repeat the question?

3 Q Did you or anyone else from Adams recruit anyone
4 from the Reading area to participate in the Adams
5 application?

6 A No.

7 Q You testified about some taping of WTVE's
8 programming. I'd like to ask you if you, did I understand
9 you correctly that you viewed the videotapes that were taken
10 prior to the time the application was filed?

11 A Most, but not all.

12 Q I'd like you to refer to Reading Exhibit 24 --

13 THE COURT: That's your declaration, the
14 declaration of November 1999.

15 THE WITNESS: Yes, sir.

16 BY MR. HUTTON:

17 Q I'd like you to refer to paragraphs 12 and 13.

18 THE COURT: Why don't we go off the record while
19 he can read those.

20 MR. HUTTON: Okay.

21 THE COURT: Off the record.

22 (Pause)

23 THE COURT: On the record.

24 Do you have a question of this now?

25 MR. HUTTON: Yes, I do.

1 BY MR. HUTTON:

2 Q In paragraph 12 you indicate that you spoke
3 regularly with the person who was in charge of making the
4 case and you were regularly briefed on the contents of the
5 programming being taped. But you don't indicate in there
6 that you actually viewed the tapes.

7 A May I first say that I state in that paragraph for
8 two weeks. Actually, I reviewed the tapes last night, and
9 it's closer to 18 days of tapes that we have. Eighteen
10 days.

11 Q Eighteen days?

12 A Yes.

13 Q Is there any reason you didn't state in here that
14 you have -- Well, why did you state that you had been
15 briefed on the contents of the programming being taped,
16 rather than viewing the tapes yourself?

17 A Well each day at the end of the -- Every 24 hours
18 I would call the man in the afternoon and say what did we do
19 yesterday, and he would tell me. I wasn't seeing the tapes
20 on a day to day basis. I was getting them shipped weekly,
21 but I wasn't getting them shipped to me daily.

22 Q In paragraph 13, it indicates that it wasn't until
23 September of 1999 that you became aware of the fact that the
24 tapes were actually of the home shopping cable channel and
25 not of WTVE's signal.

1 A Yes, sir.

2 Q If you viewed the tapes yourself, how could you
3 not be aware of that?

4 A Well, I was getting Reading PSAs. I didn't.
5 There's no way really to tell what you're getting, as far as
6 I know, that it's air or cable. I'm getting a cable feed,
7 I'm viewing it, I'm seeing Reading PSAs. It never occurred
8 to me, frankly, that the cable would be different -- First
9 off, I didn't know that he was taping cable. If I had, I
10 would have had him get it over the air; but I didn't know
11 there was any difference, frankly.

12 MR. HUTTON: Your Honor, at this time I'd like to
13 request that the tapes be produced for purposes of our
14 review. We've never seen these tapes.

15 THE COURT: You've never seen the tapes?

16 MR. HUTTON: No.

17 THE COURT: Have you ever asked for the tapes?

18 MR. HUTTON: We haven't. We didn't become aware
19 of them until they filed this, which was I think after the
20 period for discovery had ended.

21 THE COURT: There were two dates that were
22 supposedly down to start with.

23 Mr. Cole, do you remember the circumstances under
24 which it was disclosed of the tapes, about the taping?

25 MR. COLE: I believe in the document itself, Your

1 Honor. Which is November 22nd.

2 THE COURT: Well, according to my files, on
3 October 29, 1999 I issued an order FCC 99 M-67, which stated
4 that discovery closes on November 12th. And this was filed
5 on November the 22nd.

6 MR. COLE: It was signed on November 22nd, Your
7 Honor. I'm not sure when it was filed.

8 THE COURT: I'm sorry. Signed. I don't know
9 exactly the date it was filed, but probably soon after the
10 22nd of November.

11 What prompts you to wait until now? You're right,
12 it was outside, it was a matter of weeks outside the cutoff
13 date, but --

14 MR. HUTTON: What prompts me to ask for them now
15 is the fact that the witness is offering a somewhat
16 different story than is stated in the declaration, and I'd
17 like to be able to look at the tapes to find out what the
18 story is.

19 THE COURT: Let me hear from Mr. Cole.

20 MR. COLE: Your Honor, I'm not sure I -- I have
21 not heard any variation from, or any inconsistency
22 apparently between Mr. Gilbert's testimony this afternoon
23 and his previous written statements.

24 MR. HUTTON: Your Honor, this declaration
25 indicates that Mr. Gilbert was briefed on the contents of

1 the programming being taped. It doesn't suggest that he
2 actually viewed the tapes himself, doesn't say that. I had
3 drawn the conclusion that he had not, and now he's
4 testifying that he had. I think, if he had, I find it hard
5 to understand why that wasn't stated in the declaration or
6 in Adams' pleadings. So this is news to me.

7 MR. COLE: Your Honor, there is no news. What's
8 news to Mr. Hutton is that whatever assumption he may have
9 made was wrong. There's nothing inconsistent here. There's
10 nothing in this declaration that says I didn't, says Mr.
11 Gilbert did not watch the tapes. He acknowledges the tapes
12 were made, he acknowledge, as he has testified today, that
13 he was briefed on the tapes on a daily basis.

14 MR. HUTTON: But Your Honor, he indicates that he
15 couldn't tell from viewing the tapes that this was not the
16 station's programming. That's why I'd like to view the
17 tapes to see if that's accurate testimony.

18 THE WITNESS: I didn't testify it wasn't the
19 station's programming.

20 THE COURT: I think that, it doesn't come across
21 to me the way you're representing it. Between the testimony
22 and the declaration, not that there's inconsistent accounts
23 on this, but there are varying degrees of details in terms
24 of accounting for how this was done. None of which
25 indicates that there's a significant interest of having

1 access to the station reviewing it at this stage of the
2 case.

3 If you had filed a discovery motion for them
4 immediately after the declaration was filed, there might be
5 different consideration given to it. But I don't see, I
6 just don't see any purpose that would be served by requiring
7 these videotapes to be produced at this time.

8 My understanding is Mr. Boothe is going to be here
9 to be -- Am I correct? Mr. Boothe is going to be here to be
10 Cross-Examined with respect to these materials?

11 MR. COLE: Not about videotapes.

12 THE COURT: About the assessment that Adams has
13 made of the programming.

14 MR. COLE: Based on documentation which was
15 provided to us by Reading during the discovery period.

16 THE COURT: And you've provided your evidence with
17 respect to programming, PSA type programming, etc., based on
18 documents, on the company logs, and related documents.
19 There's been no tapes provided to Adams of the programming
20 that underlie the record. So I don't understand what you're
21 looking for. I don't understand.

22 MR. HUTTON: Your Honor, it's really a different
23 issue than what Mr. Boothe was involved in or what our
24 exhibits relate to.

25 What I was trying to find out is what due

1 diligence was done by Adams prior to filing its application.

2 THE COURT: I see. I see where you're going.

3 Well, again I think that --

4 MR. HUTTON: Your Honor, let me try and --

5 THE COURT: You're too late. I mean discovery,
6 this is well past the dates of discovery. If something was
7 done immediately after this declaration was filed I might be
8 considering this in a different light.

9 MR. HUTTON: Well, Your Honor, this is new
10 information that I've just gotten today.

11 THE COURT: What is?

12 MR. HUTTON: That Mr. Gilbert is claiming that he
13 personally viewed the tapes prior to the time the
14 application was filed. There's nothing in this declaration
15 that suggests that.

16 THE COURT: Well, he apparently hired somebody to
17 make the tapes, is that correct?

18 MR. HUTTON: He hired someone to make the tapes.

19 THE COURT: Somebody's paying for somebody to make
20 tapes. He's getting some reports from the person on the
21 tapes.

22 MR. HUTTON: But he's not saying that he viewed
23 them, and --

24 THE COURT: Well that would make sense. I mean if
25 you're paying for somebody to do something for you like

1 that, it seems to me you're going to want to check the tapes
2 yourself too.

3 You're saying that he didn't see the tapes? You
4 want to question him on that?

5 MR. HUTTON: What I don't understand is how, if he
6 viewed the tapes in 1994, Adams didn't become aware of the
7 fact that it was the home shopping cable channel as opposed
8 to the WTVE signal that was taped.

9 THE COURT: Have you asked him that question this
10 morning? This afternoon?

11 MR. HUTTON: I've been trying to get at it.

12 THE COURT: I think maybe if you asked it straight
13 on, let's see how Mr. Gilbert handles it.

14 MR. HUTTON: All right.

15 BY MR. HUTTON:

16 Q Mr. Gilbert, what exactly was taped in 1994?

17 A 24 hours a day for some 18 days, we were taping
18 the feed.

19 Q You were taping what?

20 A We were taping the feed. We were taping the
21 material that was being transmitted to a television set.

22 Q And what programming was on that feed?

23 A In retrospect? It was the cable, not the over the
24 air broadcast. One was a broadcast, one was a cable
25 transmission.

1 Q Was it the cable carriage of WTVE or was it the
2 cable carriage of network home shopping programming?

3 A It was the cable transmission of WTVE. Is that
4 right?

5 (Pause)

6 MR. HUTTON: Your Honor, that is flatly
7 inconsistent with the testimony in his declaration.

8 THE WITNESS: It was the home shopping cable
9 channel, let's put it that way.

10 MR. HUTTON: The first sentence of paragraph 13
11 says, "Through a misunderstanding with the person in charge
12 of the videotaping the programming which was actually taped
13 was that of the home shopping cable channel as opposed to
14 the over the air signal of the station WTVE."

15 THE WITNESS: We were getting the cable signal
16 that was being transmitted in the Philadelphia area,
17 Reading/Philadelphia area.

18 BY MR. HUTTON:

19 Q A minute ago you told me it was the cable
20 transmission of WTVE's signal.

21 A No. Let me -- It was the cable -- I may have
22 misspoke. I kept talking about the fact, and I said here
23 and I said later, earlier on in my testimony, that what we
24 were getting was the cable feed. I keep saying that.

25 Q But your testimony now is that it was not the

1 cable transmission of WTVE?

2 A My testimony is that it was the home shopping
3 cable channel that was being transmitted in
4 Reading/Philadelphia.

5 Q What cable system was the programming taped from?

6 A Well, there's home shopping network transmits by
7 satellite, I presume, a feed across the country.

8 Q Right, and then that feed gets delivered to a
9 local cable system, correct?

10 A I guess. I'm not sure, but I think so yes.

11 Q Which local cable system was the programming taped
12 from?

13 A The man had a transmitter, had a receiving set,
14 and they turned on to home shopping network, and this is
15 what they got over the cable. We knew there was only one
16 home shopping network at that time in the area.

17 Q Who was doing the taping?

18 A A group of men, a group of individuals.

19 Q And how did you come to hire these individuals?

20 A Because we needed, we wanted, after we thought at
21 the time we would probably be putting this into proof, but
22 we wanted to be sure that the program, that we would first
23 understanding what the programming was. We already knew
24 that they weren't serving the area, I mean this was
25 incredible. Boston, we had a case in Boston, this case was

1 much better than Boston.

2 We needed, we thought at the time we might need
3 tangible evidence of how bad the programming was, so we
4 taped the programming.

5 Q But you didn't tape the correct programming,
6 right?

7 A That's correct.

8 Q Okay. So your understanding was based on the
9 cable home shopping programming not WTVE's programming,
10 correct?

11 A My understanding is, in fact, we found out because
12 the logs were different. That's how we found out at this
13 late date, when we were running, comparing logs and trying
14 to make sure about the amount of time of PSAs and so on, and
15 there was a variation in the logs. When we did discovery up
16 in Reading. That's how it all came about. They're
17 substantially the same, as I understand it. I've never
18 examined the logs. My counsel tells me the programming is
19 substantially the same. We're not talking about any
20 material variations.

21 Q Well, if you viewed the programming, wouldn't you
22 have seen the hourly station identification of WTVE?

23 A Frankly, I wasn't focused on that. I was focused
24 on timing the PSAs and the nature of the PSAs and the fact
25 that they were canned and so on. I was interested in the

1 public service aspects of the thing.

2 I don't watch a lot of television, and frankly, I
3 really didn't focus on the fact that there weren't hourly
4 statements. I focused on public service and it just wasn't
5 doing the job.

6 Q All right. Who did --

7 THE COURT: Wait. Before we pass off of this,
8 you keep referring to a group of people that did the taping.

9 THE WITNESS: Yes.

10 THE COURT: Do you have any names that --

11 THE WITNESS: I do. I can't give them to you
12 right now. I was paying an individual and he had hired
13 several other men to do it with him.

14 THE COURT: Well, how did you find the individual?

15 THE WITNESS: We got him through a college
16 student.

17 THE COURT: And the individual, what's the age and
18 experience of the individual?

19 THE WITNESS: He was in his early 20s.

20 THE COURT: What does he do for a living --

21 THE WITNESS: They were college students.

22 THE COURT: College students. So then he had a
23 group that -- He, there was one person that was your contact
24 person who was a college student.

25 THE WITNESS: Not in Reading. In the Philadelphia

1 area.

2 THE COURT: In the Philadelphia area. Then he had
3 other students that were doing some of the actual work, the
4 actual taping, is that right?

5 THE WITNESS: Well, Your Honor, I have a certain
6 amount of experience in 24 hour round the clock service, and
7 I knew what it took to do that. So what we did is I wanted
8 to have two people available doing it so in case somebody
9 fell asleep we wouldn't miss any of the tapes. It takes
10 several people doing it so you get 24 hour coverage and you
11 don't forget to reload and so on. So that's what I had.

12 THE COURT: But this was not Booze Allen. This
13 was --

14 THE WITNESS: No, no. This was not Booze Allen.

15 THE COURT: This was a student?

16 THE WITNESS: Student.

17 THE COURT: And he had students and one of them
18 was your contact person --

19 THE WITNESS: Yes.

20 THE COURT: -- and then he had one or two others
21 who were helping him.

22 THE WITNESS: Yes, definitely.

23 THE COURT: So there was constant coverage.

24 THE WITNESS: Right.

25 THE COURT: Okay. How was this student tapped?

1 THE WITNESS: He was a friend of a son of a friend
2 of mine.

3 THE COURT: And I'm not sure how much experience
4 it takes, but did he have any particular insight or
5 experience or whatever, qualifications for the task?

6 THE WITNESS: Frankly, he probably knew more about
7 taping than I -- does know more about taping than I do. He
8 had taped video programs, I made sure he was capable of
9 doing that. I got copies of what he was doing at the
10 beginning to make sure it looked okay to me.

11 THE COURT: I'm still confused as to how you could
12 get a cable -- He was taping a cable station?

13 THE WITNESS: He didn't know that. He was --

14 THE COURT: No, no. But this is what he was
15 doing. He was taping a cable station.

16 THE WITNESS: In retrospect, that's what he was
17 doing.

18 THE COURT: Even at the time that's what he was
19 doing.

20 THE WITNESS: In retrospect, he was doing it at
21 the time, I didn't know it.

22 THE COURT: I'm not trying to pin you with -- I'm
23 trying to figure out --

24 THE WITNESS: Right, that's what he was doing.

25 THE COURT: He was taping a cable station. What

1 was the identity of the cable station?

2 THE WITNESS: I don't know, Your Honor. If I knew
3 that, I wouldn't, we would have had him trying to get an
4 over the air feed.

5 BY MR. HUTTON:

6 Q Where was the cable system located?

7 A I don't know.

8 Q Where was this son of the friend of --

9 A A suburb of Philadelphia.

10 Q So it wasn't in Reading or near Reading.

11 A Reading is near Philadelphia.

12 Q It's about 40 miles away.

13 A Well, where I live 40 miles is a suburb, frankly.
14 I don't consider Reading a suburb, but it wasn't far away.

15 Q Had you taken any steps or had he taken any steps
16 to verify that WTVE was actually carried on the cable system
17 being taped?

18 A He told me he had before we started.

19 Q But --

20 THE COURT: Let me finish, and then you can come
21 back to it.

22 MR. HUTTON: All right.

23 THE COURT: So what he had done, he took some
24 cable station, and you don't even know really what city it
25 was from. It could have been from Philadelphia, it could

1 have been from whatever --

2 THE WITNESS: The public service on it, Your
3 Honor, was from Reading.

4 THE COURT: I hear what you're telling me, but I'm
5 trying to figure out, I'm trying to piece this together as
6 best I can.

7 THE WITNESS: Right.

8 THE COURT: The fact remains that sitting here
9 today you don't know what channel, what cable station he was
10 recording.

11 THE WITNESS: That's correct, Your Honor.

12 THE COURT: You know the programming he was
13 recording.

14 THE WITNESS: Yes, I know where it's coming from.

15 THE COURT: So it could be coming from Ardmore,
16 who knows.

17 THE WITNESS: Who knows, I don't know.

18 THE COURT: The second question I have is, you sat
19 down and you looked at some of these tapes --

20 THE WITNESS: Every one of the tapes, Your Honor.

21 THE COURT: How soon after the taping did you look
22 at them. I know you called him the day after, but how soon
23 afterwards?

24 THE WITNESS: Immediately when I would get the
25 transmission.

1 THE COURT: How would you get the transmission?

2 THE WITNESS: FedEx.

3 THE COURT: In other words he'd take the VCR
4 system FedEx too?

5 THE WITNESS: Only one. Then after I got the
6 first one, the first day, by the week.

7 THE COURT: But that's how he did it right? He'd
8 take the VCR out of the slot --

9 THE WITNESS: Yeah, from the VCR, yeah.

10 THE COURT: You sat and you watched these things
11 and it had nothing in terms of you're now, it had no station
12 identification on the tape that you have. There's nothing
13 that identified --

14 THE WITNESS: In retrospect I guess not, yes.

15 THE COURT: That programming just popped up on the
16 screen.

17 THE WITNESS: I was getting, what do you call it,
18 I was getting PSAs from Reading. It never occurred to me to
19 think that I wasn't getting --

20 THE COURT: Let me follow this through with you.

21 Assume hypothetically that this was a cable, you
22 were getting cable programming from a cable programming
23 operation or a station in some place other than Reading.
24 How would there be Reading PSAs on that tape?

25 THE WITNESS: I don't know.

1 THE COURT: But there were.

2 THE WITNESS: Yes.

3 THE COURT: Is there any way that you know, Mr.
4 Hutton, that he could be watching a non-WTVE station and be
5 getting WTVE PSAs?

6 MR. COLE: WTVE PSAs Your Honor, or Reading PSAs?

7 THE COURT: Well, these are just Reading PSAs that
8 were run by a variety of stations in Reading? When we're
9 talking about Reading PSAs, I thought you meant the ones
10 that this station was running.

11 THE WITNESS: As far as I -- They were
12 Pennsylvania PSAs, it's been awhile since I looked at them.
13 And they were Pennsylvania, and as I recall they were
14 Reading, PA PSAs.

15 BY MR. HUTTON:

16 Q What do you mean by Reading, PA PSAs?

17 A They had to do with -- First off, they were
18 rudimentary. They had to do with Pennsylvania problems, and
19 as I recall they had to do, occasionally there was a mention
20 of Reading.

21 MR. HUTTON: Your Honor, I think this is very
22 troubling. I would like to renew my request to review the
23 tapes.

24 THE COURT: That's why I've been asking the
25 questions and you keep interrupting me.

1 MR. HUTTON: I'm sorry, I'm sorry.

2 MR. COLE: Your Honor, if I might refer the Court
3 to Adams Exhibit No. 11 which is a Reading Eagle weekly
4 television guide for May 29 to June 4, 1994, and direct the
5 Court's attention to the fact that on page two of that
6 there's a listing of multiple channels, or multiple
7 programming sources which are carried on basic cable
8 channels in the Berks Cable Channel Guide. One of those
9 basic cable channels listed is Home Shopping Network on
10 Channel 53. Up in the broadcast channels for Berks Cable
11 Channel Guide is listed Channel 51, WTVE, Reading, which is
12 carried on Cable Channel 24, according to this.

13 THE COURT: What page are you on?

14 MR. COLE: We're on page two of Adams Exhibit 11.

15 THE COURT: Berks Cable Channel Guide.

16 MR. COLE: Berks Cable Channel Guide. If you look
17 at the top, Channel 51 is listed. If you look down below in
18 the basic cable channels you'll note that a separate channel
19 of Home Shopping Network programming is also available on
20 that system.

21 MR. HUTTON: But Your Honor, we don't know that
22 this was the Berks cable channel system that was being
23 taped. In fact if you look at the next column it's the
24 Service Electric Channel Guide, and it indicates that WTVE
25 was not carried on that cable system at all.

1 So if it was -- Without knowing which cable system
2 was being taped, this cable channel guide doesn't give you
3 any guidance.

4 MR. COLE: Your Honor, all this may be true, but
5 the ultimate question is, so what? Adams has not sought to
6 rely on these tapes at all except to explain that an effort
7 was made by Adams to tape 24 hours a day of programming for
8 a couple of weeks to find out what was on the air. There
9 was a misunderstanding, the wrong cable programming was
10 taped. It was a nice try. We've moved on.

11 MR. HUTTON: Your Honor, I think the answer to
12 that is the Garden State case shows that the applicant there
13 did a far more rigorous analysis of the station's
14 programming, and nevertheless the Commission decided that
15 the application constituted an abuse of process.

16 MR. COLE: Under substantially different facts or
17 circumstances.

18 THE COURT: I'm not going to get into that. I'm
19 not going to get into that.

20 I want to find out what went on in this
21 ascertainment and that's what I'm here to do. There's an
22 open motion to add an issue that would relate to this. If
23 the issue gets added there will be discovery on that issue
24 and we'll talk about that then. But I think you'd be well
25 advised if I'm asking questions not to interrupt me. And

1 let's get this record going.

2 MR. HUTTON: I apologize, Your Honor.

3 THE COURT: Well, I can only deal with so much.

4 So you took this information as you have described
5 it. Did this young man give you any written analysis or
6 anything in writing? This was all done over the phone and
7 the tapes, is that your --

8 THE WITNESS: I was watching the tapes.

9 THE COURT: But that was the extent of your -- I'm
10 trying to get your methodology of how you were given the
11 tapes from this young man. Was he sending you e-mails
12 and --

13 THE WITNESS: No, no. I was calling him. I'm not
14 big on e-mail, Your Honor. Those days nobody was big on e-
15 mail, frankly.

16 THE COURT: Was it that long ago? '94?

17 All right. At what point in time did you decide
18 and say okay, I've seen enough?

19 THE WITNESS: I never said I saw enough. I
20 watched every transmission. This was part of like belt and
21 suspenders, Your Honor.

22 THE COURT: You said two weeks, though --

23 THE WITNESS: Yeah.

24 THE COURT: Two weeks, 24 hours a day.

25 THE WITNESS: I watched it all. It was not

1 exactly fun.

2 THE COURT: When did you say this was all I want
3 to see?

4 THE WITNESS: When we ran through the 30th of June
5 or whatever the period was.

6 THE COURT: So you took a month?

7 THE WITNESS: Eighteen days.

8 THE COURT: Was there some reason why you decided
9 okay, that's all I want to see?

10 THE WITNESS: This stuff was terrible, Your Honor.
11 In my opinion, the amount of time that was being spent on
12 public service announcements and broadcasting in general was
13 so far below the standards required to meet the statutory
14 standards, that I had had more than enough.

15 THE COURT: So you -- At what point did you reach
16 that decision? After you saw the 18th day of --

17 THE WITNESS: Frankly, Your Honor, I reached it on
18 the first day, but I kept reading in case something
19 different was going to pop up, it's like a [conference] a
20 day. You keep watching and watching to see if anything is
21 different. And nothing was different.

22 THE COURT: Were you communicating to Mr. Haag or
23 anybody in your group?

24 THE WITNESS: Sure, Haag and I talked every day.

25 THE COURT: About this?

1 THE WITNESS: Haag was very interested.

2 THE COURT: This is what you were talking to him
3 about?

4 THE WITNESS: Among other things, yes.

5 THE COURT: So you were keeping him apprised.
6 Anybody else in the group being kept apprised of this?

7 THE WITNESS: Possibly Umans, I just don't
8 remember

9 THE COURT: Now at what point --

10 THE WITNESS: It depends on the personality of the
11 people as to how much they want to know.

12 THE COURT: At what point after the 18 days of
13 taping did you reach a conclusion, at least a preliminary
14 conclusion, that you were going to go forward with this
15 effort?

16 THE WITNESS: I couldn't tell you, Your Honor. I
17 don't remember that kind of thing.

18 Okay, let me give it to you differently.

19 First off, we believed that they weren't serving
20 the public interest. When we got into Reading and found
21 nobody in Reading that we talked to was aware of the
22 existence of the station, they weren't turning it off --

23 THE COURT: You testified to that before.

24 THE WITNESS: Yeah. So we knew that they weren't
25 serving the public interest. I go and talk to the people at